

# *Californians for Renewable Energy, Inc*

## **State of California Energy Resources Conservation And Development Commission**

In the Matter of:	)	
	)	Docket No. 99-SIT-6
Stakeholder Hearing On	)	
Energy Facility Permitting and	)	3-13-2000
<u>Changes to the Siting Process</u>	)	

### **COMMENTS OF CALIFORNIANS FOR RENEWABLE ENERGY, INC. TO ENERGY SITING COMMITTEE S RECOMMENDATIONS**

Californians for Renewable Energy, Inc. (CARE) has participated as an intervenor in the siting process and provided written response to the *Public Advisor s Intervenor Survey* of December 21, 1999.

CARE has reviewed the Comments of the City of Los Angeles, Department of Water and Power to the Energy Commission s Siting Recommendations and concurs with many of LADWP s comments. Although CARE agrees that the Commission s siting procedure has many flaws and inconsistency within the requirement s of CEQA, this does not pre-suppose that the demise of the Commission is in the best interest of the people of California. CARE agrees with LADWP that the failure of the Commission to provide for an adequate environmental review process complete with scoping, viable alternatives, and local mitigation measures, provides private corporate gas fired power generators a competitive advantage over public funded power generators now under the jurisdiction of the California Public Utilities Commission. CARE disagrees with LADWP that the PUC taking over the Commission s jurisdiction for siting of private corporate generators will provide fair competition in the market place. It is CARE s contention that this will in fact create the opposite effect, giving the public funded generators the competitive edge in the market place. CARE supports maintaining the jurisdictional integrity of both the CEC and the PUC by providing a common siting process shared by both agencies. In the *Public Advisor s Intervenor Survey* of December 21, 1999 100% totally disagree with staff that the CEC is functionally equivalent with CEQA . The PUC siting process provides for a CEQA equivalent scoping process, and the development of viable alternatives. The PUC process has a draft Environmental Impact Report (DEIR) and Final EIR which is certified pursuant to CEQA. This is an area of the Commission s process that is not CEQA equivalent. The PUC must make findings of overriding consideration in order for unmitigated adverse impacts to be allowed to exist if a new generation source is approved. Why shouldn t the Commission share the same environmental review process that is shared by the PUC, and every other county, city, and special district in the state?

CARE contends that the Committee s recommendations misrepresent the stakeholders opinions on the Commission s CEQA equivalency, elimination of the Notice of Intention (NOI), the twelve month process, public participation, and the Commission s assuming its permitting jurisdiction to include all transmission lines. CARE will respond to the Commission s recommendation through citation of the recommendation s conclusions

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As a result of its evaluation, the Commission believes that the State's energy facility siting process is fundamentally sound and provides an efficient and legally sustainable method for licensing large power plants and related transmission lines in California. None of the stakeholders involved in the Commission's evaluation or participating in hearings before the legislature since restructuring have advocated eliminating or significantly altering the process. The majority of the stakeholders have also urged maintaining the Commission's certified regulatory program rather than returning to a strict CEQA process.

CARE fundamentally disagrees with these representations of the stakeholders' position on CEQA equivalency. In fact, in the *Public Advisor's Intervenor Survey* of December 21, 1999, 100% totally disagree with staff that the CEC is functionally equivalent with CEQA. The inability of the Commission's process to comply with the CEQA's requirements means the siting process is fundamentally flawed, not sound, and may be legally indefensible. The Commission's misrepresentation of the stakeholders' views in this matter illustrates clearly the failure of the Committee to provide the stakeholders meaningful input in the siting process.

Virtually all generation projects currently being contemplated by the Commission are exempt from the first phase of the two-part process, the NOI, and are licensed in a single 12-month process, the AFC. The only structural change in the process the Commission currently recommends is the development of a more efficient, expedited, single-step licensing process to replace the SPPE. In the meantime the Commission believes that specific data adequacy requirements are needed for SPPEs to improve the effectiveness of the process.

CARE fundamentally disagrees with the position that all generation projects (Gas fired) are exempt from the NOI, and are licensed in a single 12-month process. In fact, in the *Public Advisor's Intervenor Survey* of December 21, 1999, 91% disagree with staff that the Notice of Intent be eliminated. The elimination of the NOI creates additional non-equivalencies with CEQA in the areas of the project's scope and viable alternatives to the project, which are required to properly mitigate adverse impacts. Since many of the projects under the Commission's review are located in areas of the state where target environmental justice populations are present, the elimination of the NOI creates potential discriminatory impacts on these populations, within the definition of federal title VI the Civil Rights Act of 1964. Because these projects are located in areas of the state in non-compliance for state and federal air attainment guidelines, the trading of emission reduction credits are required for new point sources emitting more than one hundred tons of criteria air pollutants. While CARE recognizes that gas combustion is relatively cleaner than other forms of combustion it is still major source of criteria air pollutants and TACs. The elimination of NOI fosters the elimination of viable alternatives to the projects, which are required to properly mitigate adverse impacts. The statement that these gas fired plants are, licensed in a single 12-month process, is erroneous. In fact when stakeholders who are intervenors in the Commission's process have requested time extensions they have been summarily denied, which denied intervenor's adequate time to provide input. When the project applicants have requested time extensions, the Commission automatically grants them. A case in point is the Metcalf Energy Center project where the applicant Calpine/Bechtel has been allowed to extend the siting schedule to 18 months, despite the citation by CARE that CEQA requires the 12-month schedule for state agencies like the CEC. This is another area of the Commission's process that is not CEQA equivalent. The recommendations to further expedite the process illustrate the Committee's attempt to limit the public's right to participate in the environmental review process.

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Several opportunities were identified for improving the efficiency of the AFC process in the context of the competitive electricity market. These include updating the information requirements for facility applications, requiring site control, instituting specific process timeframes, and increasing the flexibility for evaluating project changes.

The recommendations to further expedite the process illustrate the Committee's attempt to limit the public's right to participate in the environmental review process.

The Commission believes that public participation and communication between all participants in the process can be improved by dropping meeting noticing requirements for all parties except staff, and streamlining the noticing requirements for meetings between staff and other parties. The Commission would still maintain ex parte requirements for decision-makers. More effective public participation can also be promoted by increasing the use of early public scoping sessions to identify and resolve issues, providing specific responses to public comments in staff and Commission analysis documents, and clarifying the role of the public in Commission hearings.

CARE disagrees that the elimination of any public notice, in compliance with the requirements of the Bagley-Keene Open Meeting Act, in any way facilitates public participation. CARE does agree with the use of early public scoping sessions to identify and resolve issues.

The Commission has also identified a number of changes to improve the timeliness and effectiveness of state and local agency participation in the siting process. These include a specific timeframe for the filing of agency comments, minimizing overlap between agency and staff analyses, improving application filing (data adequacy) requirements to support agency needs, and providing time for agencies to evaluate project changes. The Commission also recommends developing a more timely approach for providing CEQA documentation for local agencies to make land use decisions, where needed, as part of the siting process. It describes how and under what circumstances the Commission would override regulatory, land use or CEQA requirements in approving project applications.

CARE agrees with these Committee recommendations with the exception of override authority. CARE does not agree that the Commission should have authority to override local jurisdictions nor with granting the Commission the power of eminent domain in the siting of privately held gas fired power generators. In the *Public Advisors Intervenor Survey* of December 21, 1999 100% of the intervenors totally disagree with the eminent domain on behalf of the licensee by the CEC.

Based on an evaluation of the present use of its organization and resources, the Commission concludes that additional resources are needed to respond to the increasing siting and compliance workload and that any surplus resources created by the recent elimination of the need analysis in the siting process have already been redirected or eliminated.

CARE agrees that additional resources are needed for the increased workload. CARE strongly urges additional resources be provided the public advisors office to more thoroughly encourage the public's participation in the siting process.

The Commission also concludes that, at this time, its permitting jurisdiction should be expanded to include all transmission lines to better facilitate a competitive electricity market.

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CARE strongly disagrees that the CEC permitting jurisdiction should be expanded to include all transmission lines. Instead CARE concurs with the comments in this regard from the LADWP that the PUC maintain jurisdiction for transmission lines.

CARE proposes the following **additions** or ~~deletions~~ to the following recommendations:

## LEGISLATIVE RECOMMENDATIONS

Specific recommendations for legislative action are:

1. The Legislature should maintain the NOI for ~~large~~, controversial projects that are **emission sources for criteria air pollutants and toxic air contaminants (TACs) not currently exempted from it (coal and nuclear)**. 91% of the intervenors disagree with staff that the Notice of Intent be eliminated. [Issue #1]
2. The Legislature should ~~continue the 12-month licensing process for all natural gas-fired facilities and not~~ move to a two tiered process **of 12-months** for standard and **24-months** for non-standard projects. [Issue #1]
3. The Legislature should amend the Warrant-Alquist Act ~~by deleting~~ requirements for the Commission to perform a steam-field resource adequacy analysis for a geothermal project, **and an impact analysis on ground water contamination from the project**. ~~The Commission should delete the same requirements from the siting regulations~~. 55% of the intervenors disagree that required analysis should be deleted. [Issue #2]
4. The Legislature should modify the Warren-Alquist Act to require agencies to provide comments within 180 days following acceptance of the AFC **for standard projects**. [Issue #10]
- ~~5. The Legislature should consolidate the permitting of generation facilities and transmission lines within the Commission. [Issue #18]~~
- ~~6. The Legislature should include eminent domain authority with the Commission's transmission line permitting authority. [Issue #18]~~
5. ~~7.~~ To respond to the increasing yet uncertain siting and compliance workload, the Legislature should augment the Commission's budget with a combination of staff positions, ~~and~~ contract funds, **and increases in staffing and funding for the public advisors office**. [Issue #15]

## INTERVENORS LEGISLATIVE RECOMMENDATIONS

These additions are recommended to make the CEC siting process consistent with State and Federal law.

Specific recommendations for legislative action are:

1. The Commission siting process shall be consistent with CEQA requirements for completion of an EIR on all non-zero air emission generation projects, and preparation of such shall take place within a twelve-month period. The Commission's siting process should be based on the existing siting process utilized by the California Public Utilities Commission.
2. A prohibition of new air emission sources from being located in areas of non-attainment of any federal or state air standards.
3. New energy development should be limited to those areas in the State that can be developed without the use of trading of Emission Reduction Credits ERCs in any areas of non-attainment.

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4. Limit project development to projects that comply with LORS prior to the Application for Certification's AFC's submission. State agencies must not be allowed to make up the rules as they go along. A project that does not comply with local guidelines cannot be approved.
5. Each applicant for a siting case must have Irrefutable Site Control prior to submission of the AFC.
6. Restrict non-zero emission generation to areas outside of affected residential, low income, minority, and agricultural communities in the state.
7. All public workshops, hearings and decisions on the AFC held in public meetings consistent with the state's open meeting laws and in a location near the proposed project site, during afternoon and evening hours so that the Public can be offered the equal opportunity to attend and give testimony. Provide accommodations for disabled public participation, with prior notification by affected individuals.
8. That all cooling be mandated be Dry Cooling, to conserve the State's valuable water resources for those Public uses that are mandated by Article X Section 2 of the California Constitution.
9. Prohibit the international export of power generated within State and Federal air pollution non-attainment areas of California.
10. All new plants proposed for non-attainment areas must offset emissions through financing local electric vehicle transportation. Offsets must be real, benefit local air quality, and sustain continuous improvements in regional environmental conditions.
11. Define minority populations and communities consistent with the federal CEQ and US EPA guidance's on environmental justice and extend the state's environmental justice statute (Solis bill) to include the California Energy Commission.
12. The Commission be required to do a master EIR when more than one generating facility is located in an area or County, to address toxic hot spots.

## **REGULATORY RECOMMENDATIONS**

Specific recommendations for action by the Commission in its regulations are:

1. The Commission should ~~maintain the SPPE process for now but should work with stakeholders to~~ develop an expedited process for facilities satisfying specific criteria ~~that is equivalent to CEQA's mitigated Negative Declaration process.~~ [Issue #1]
2. The Commission should establish data adequacy criteria for ~~SPPE-all~~ applications in the Commission's siting regulations. [Issue #1]
3. The Commission should update the data adequacy requirements in the siting regulations. [Issue #2]
4. The Commission should add definitions to the siting regulations for Letter of Intent, and Option Contract to provide a common understanding of what applicants may be required to provide to the Commission when securing emission reduction credits. [Issue #2]
5. The Commission should add to Section 1716 (g) of the siting regulations broader language consistent with the definition of electric utility found in PR Code / 25108.

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6. The Commission should continue to restrict distribution in siting cases of confidential information regarding proprietary subjects and sensitive environmental sites, ~~unless such confidential information precludes the public from knowing about adverse environmental affects.~~ [Issue #2]
7. The Commission should amend the siting regulations to provide siting case participants the option of filing material electronically. [Issue #2]
8. The Commission should add to the data adequacy portion of the siting regulations a requirement that applicants demonstrate site control in the AFC.  
[Issue #3]
9. The Commission should revise the siting regulations to ~~drop~~ **require** noticing requirements for all parties **consistent with Bagley-Keene Open Meeting Act.** ~~except staff.~~ [Issue #7]
10. The Commission should revise the siting regulations to specify that noticing is ~~not~~ required for meetings between staff and other agencies, ~~with no other parties in attendance.~~ [Issue #7]
11. The Commission should revise the siting regulations to specify that Commission staff participation in unnoticed meetings is limited to clarification of information, data exchange and procedural discussions but that negotiation of Commission staff positions on issues is prohibited, except in publicly noticed meetings. [Issue #7]
12. The Commission should improve the data adequacy requirements to ensure the application contains information normally required by agencies to make their conclusions and recommendations. [Issue #10]
13. The Commission should amend the siting regulations to identify the ISO s responsibilities in the siting process. [Issue #12]

## **PROCEDURAL AND INTERNAL CHANGES**

Specific recommendations for the Commission to make in its procedures and internal practices are:

1. Rather than proposing changes in the law or regulations at this time, the Commission should include language in its data adequacy determinations ~~on individual cases to deal with changes that identify~~ **specific criteria for acceptance.** This language could state that the determination applies to the project as described in the application and that substantial changes in the project will be ~~reviewed by the Commission Committee and the Committee may adjust the schedule as supported by the evidence used to deny the application for certification on the grounds that the applicant failed to provide timely information.~~ [Issue #3]
2. The Commission should work with project developers and agencies to ~~broaden~~ **limit** the conditions of certification and **more clearly identify** the project s description in the Commission s final decision. The objective of this effort would be to ~~allow~~ **limit** changes in the project after certification, ~~without to~~ formal amendments, ~~that do not alter the basic project or its emissions and interconnections as approved but and~~ require appropriate review if new environmental or public health and safety impacts are expected. [Issue #3]
3. The Commission should retain the use of a certified regulatory program **that is consistent with the requirements of CEQA and similar in process to the California Public Utilities Commission.**  
[Issue #5]

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4. The Commission should submit its updated certified regulatory program to the Resources Agency for review and approval by December 2000. [Issue #5]
5. The Commission should evaluate the use of an initial study format to identify and prioritize issues early, and pare down staff's written analysis on minor issues where there is no controversy or there are no significant impacts. [Issue#5]
6. The Commission should amend the siting regulations to specify time requirements for requesting Committee rulings and appealing of those rulings to the full Commission. [Issue #4]
7. The Commission should amend its siting regulations to specify that all requests for information ~~are to be submitted no later than 180 days from the date the AFC is found to be data adequate~~ be submitted within ten days of the hearing on the Commission's draft environmental document. Data requests may be filed later at the discretion of the Committee for good cause shown by the requesting party. [Issue #4]
8. The Commission should ~~continue~~ revise the current alternatives analysis approach used in the siting process to be consistent with CEQA's requirements to provide adequate project impact mitigation in the form of viable alternatives. [Issue #6]
9. The Commission should include responses to written comments in the ~~Final Staff Assessment final environmental document and continue to respond to the significant environmental points in the Presiding Member's Proposed Decision.~~ [Issue #8]
10. Notwithstanding its procedural formality, the Commission should continue to use the existing hearing structure to develop the record required as the basis for a decision that is legally sustainable. ~~Members of the public will be provided equal access to information and their right to participate will be paramount in the Commission's hearing process.~~ [Issue #9]
11. The Commission should hold informal hearings for uncontroversial issues. [Issue #9]
12. To help improve the effectiveness of public input to the siting process, the Commission should hold public scoping sessions on controversial projects early in the siting process. [Issue #9]
13. The Commission should clarify ~~the~~ its role is that of the public's servant in the hearing process and ~~the~~ that greater weight be given to public comments in the decision-making process. [Issue #9]
14. The Commission should provide agencies sufficient time to evaluate substantial project changes, and that this may be used as grounds to deny the project. [Issue #10]
15. The Commission should discuss the issue of CEQA documentation with the Resources Agency and the Office of Planning and Research regarding other agencies' decisions pertaining to projects that are the subject of AFCs. [Issue#11]
16. The Commission should hold a workshop to further discuss CEQA documentation options with stakeholders and local agencies regarding other agencies' decisions pertaining to projects that are the subject of AFCs. [Issue#11]
17. The Commission and the ISO need to work to establish the relationship between the ISO's transmission planning process and the Commission's policy and permitting processes. [Issue #12]

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18. The ISO should continue commenting on data adequacy, submit comments on the proposed transmission interconnection within 180 days of Commission acceptance of an AFC (See Issue #10), and testify in hearings, if critical, for addressing transmission system reliability concerns. [Issue #12]

19. The Commission should continue to seek the conclusions and recommendations of other state and local agencies regarding the conformance of the proposed project with their applicable legal requirements and request agency input on the potential environmental impacts of a project and appropriate mitigation measures. [Issue #13]

20. The Commission staff should not duplicate the review of other agencies regarding a project s compliance with applicable legal requirements except where the agencies are not performing the work in a timely manner or where reliance on their analysis may place the Commission s decision in jeopardy. [Issue #13]

21. The Commission staff should continue to analyze information showing the potential for significant impacts, despite a project s compliance with applicable legal requirements. [Issue #13] The Commission should continue to evaluate the appropriateness of overriding significant adverse impacts under CEQA or noncompliance with state or local legal requirements based on the factual record and the desirability for making the required findings on each individual siting case.[Issue # 14]

22. The Commission should continue to monitor the emerging competitive market and work with other entities, particularly the ISO and their transmission planning process (see Issue #12), to identify the circumstances where energy facilities may be required to meet reliability, environmental, or other public policy. [Issue #14]

23. The Commission is not able to reduce resources previously used to prepare the need analysis on siting cases because these resources have already been redirected or eliminated. [Issue #16]

24. ~~If the~~ The Legislature ~~should~~ decides to charge fees for reviewing AFCs, the Commission recommends they should be managed to allow adequate funding to maintain a baseline level of trained siting and compliance monitoring staff regardless of the workload and to respond rapidly to workload increases with a combination of staff positions and contract funds depending on the duration and magnitude of the workload. ~~These fees should include funding for the activities and staffing of the public advisor s office. 80% of the intervenors agree that fees should be charged.~~ [Issue #17]

## **CONCLUSIONS**

CARE would like to thank the Commission for the opportunity to participate in the siting process as an intervenor and member of the public. CARE strongly encourages your careful consideration of the issues identified in these comments. As a result of the changes in the energy market place due to deregulation there is now a greater need for vigilance in the review of gas fired generation projects in the Commission s licensing process. The failure to do so creates the potential for substantial degradation of California s air quality, which will have implications both nationally and worldwide. Global warming is problem now recognized by scientists worldwide. Your decision to give private corporate gas-fired generators an unfair advantage in the deregulated market place holds potential to cause irreversible damage worldwide. Please consider your recommendations carefully — the planet depends on it.

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## Attachment 1

### Legislative Recommendations Prepared by Californians for Renewable Energy

The following are legislative recommendations prepared by Californians for renewable energy, that show changes to the recommendations prepared by the California energy Commission.

#### LEGISLATIVE RECOMMENDATIONS

Specific recommendations for legislative action are:

1. The Legislature should maintain the NOI for ~~large,~~ controversial projects that are emission sources for criteria air pollutants and toxic air contaminants (TACs) ~~not currently exempted from it (coal and nuclear).~~ 91% of the intervenors disagree with staff that the Notice of Intent be eliminated. [Issue #1]

2. The Legislature should ~~continue the 12-month licensing process for all natural gas-fired facilities and not~~ move to a two tiered process of 12-months for standard and 24-months for non-standard projects. [Issue #1]

3. The Legislature should amend the Warrant-Alquist Act ~~by deleting~~ requirements for the Commission to perform a steam-field resource adequacy analysis for a geothermal project, ~~and an impact analysis on ground water contamination from the project. The Commission should delete the same requirements from the siting regulations.~~ 55% of the intervenors disagree that required analysis should be deleted. [Issue #2]

4. The Legislature should modify the Warren-Alquist Act to require agencies to provide comments within 180 days following acceptance of the AFC for standard projects. [Issue #10]

~~5. The Legislature should consolidate the permitting of generation facilities and transmission lines within the Commission. [Issue #18]~~

The legislature should hold hearings regarding the consolidation of the functions of the CEC within the California Public Utilities Commission.

~~6. The Legislature should include eminent domain authority with the Commission's transmission line permitting authority. [Issue #18]~~

5. ~~7.~~ To respond to the increasing yet uncertain siting and compliance workload, the Legislature should augment the Commission's budget with a combination of staff positions, ~~and~~ contract funds, and increases in staffing and funding for the public advisors office. [Issue #15]

#### INTERVENORS LEGISLATIVE RECOMMENDATIONS

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1. The Commission siting process shall be consistent with CEQA requirements for completion of an EIR on all non-zero air emission generation projects, and preparation of such shall take place within a twelve-month period. The Commission's siting process should be based on the existing siting process utilized by the California Public Utilities Commission.
2. A prohibition of new air emission sources from being located in areas of non-attainment of any federal or state air standards.
3. New energy development should be limited to those areas in the State that can be developed without the use of trading of Emission Reduction Credits ERCs in any areas of non-attainment.
4. Limit project development to projects that comply with LORS prior to the Application for Certification's AFC's submission. State agencies must not be allowed to make up the rules as they go along. A project that does not comply with local guidelines cannot be approved.
5. Each applicant for a siting case must have Irrefutable Site Control prior to submission of the AFC.
6. Restrict non-zero emission generation to areas outside of affected residential, low income, minority, and agricultural communities in the state.
7. All public workshops, hearings and decisions on the AFC held in public meetings consistent with the state's open meeting laws and in a location near the proposed project site, during afternoon and evening hours so that the Public can be offered the equal opportunity to attend and give testimony. Provide accommodations for disabled public participation, with prior notification by affected individuals.
8. That all cooling be mandated be Dry Cooling, to conserve the State's valuable water resources for those Public uses that are mandated by Article X Section 2 of the California Constitution.
9. Prohibit the international export of power generated within State and Federal air pollution non-attainment areas of California.
10. All new plants proposed for non-attainment areas must offset emissions through financing local electric vehicle transportation.° Offsets must be real, benefit local air quality, and sustain continuous improvements in regional environmental conditions.
11. Define minority populations and communities consistent with the federal CEQ and US EPA guidance's on environmental justice and extend the state's environmental justice statute (Solis bill) to include the California Energy Commission.
12. The Commission be required to do a master EIR when more than one generating facility is located in an area or County, to address toxic hot spots.